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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,240	10/19/2001	Jon C. Gehrke	459799-1	7876

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EXAMINER

PHAM, HUONG Q

ART UNIT PAPER NUMBER

3764

DATE MAILED: 09/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/038,240

Applicant(s)

GEHRKE, JON C.

Examiner

Huong Q. Pham

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 7-10 and 12-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-31 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7-10, 12, 14- 22, 32 is/are rejected.
- 7) ☒ Claim(s) 13, 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. "straight support assembly" lacks proper antecedent basis. Also, it is unclear what structure is the recited "means for interchanging..."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Marlow et al. . Note that Marlow et al shows every claimed feature of claim 1 including a first base 22 (note figure 3), second base 24, a hook, a support assembly , a connector 21. As for claim 18, note column 2, lines 39- 42 of Marlow et al.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marlow et al in view of Treutellaar (3,068,859) or Price (4,541,596) .

Marlow et al teaches that the upright rods 14 are adjustable in length (column 2, lines 39-42. Treutellaar and Price both teach a means to secure two elongated telescoping members together. In view of the teaching of Treutellaar or Price , it would have been obvious to an ordinary skill in the art at the time the invention was made to provide the support sections of Marlow et al with means to secure the supports section to each other in order to provide vertical adjustment for the support members. Note that the provision of a well-known means to secure two elongated telescoping members together in order to provide vertical adjustment is well-known in the art, and provides no unexpected result, and therefore is unpatentable over prior art .

Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marlow et al in view of Blatt and Molina . Note that the frame 14, 22, 24 of

Art Unit: 3764

Marlow et al is capable of being used as a frame for supporting an arm sling.

Blatt teaches the recited L- shaped envelope for supporting an arm. In view of the teaching of Blatt, it would have been obvious to an ordinary skill in the art at the time the invention was made to use the sling of Blatt with the frame 14, 22, 24 of Marlow et al for supporting a limb of a person. Note that Molina teaches that the hand protrudes from a limb support means. In view of the teaching of Molina, it would have been obvious to an ordinary skill in the art at the time the invention was made to make modify the device of Blatt so that a hand can be protruded from the envelope. As for claim 15, note Figure 6 of Blatt. As for claim 16, note Figure 2 of Blatt . As for claim 17, note Figures 1 and 3 of Blatt .

Claims 12, 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marlow et al in view of Spencer (6,095,714). Note the comments relative to the claims above for the teaching of Marlow et al. While Marlow et al does not teach the recited grooves and tongue in claims 32, 12, Spencer teaches these grooves and tongue . In view of the teaching of Spencer, it would have been obvious to an ordinary skill in the art at the time the invention was made to provide these recited grooves and tongue in order to provide locking means for telescoping tubes. The provision of grooves and tongue in telescoping tubes in order to provide some degree of flexibility of an end structure of the tube is well-known in the art of telescoping tubes, and does not provide any unexpected result , and therefore is not patentable over prior art.

Art Unit: 3764

Claims 1-3, 5, 7-10, 18, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Price (4,541, 596) in view of Haskell. As for claims 1, 19, Price shows every claimed feature of claims 1, 19 including a support assembly 26 (figure 1), a connector 29, 23, a second base 21, 41, 42 except for a first base and a sling assembly. Note that the device of Price is capable of being used with a sling. Haskell teaches a sling being connected to a support assembly 1 insertable into a base 4,5 on a flat surface. In view of the teaching Haskell, it would have been obvious to an ordinary skill in the art at the time the invention was made to use the support assembly of Price with the sling of Haskell. While it is not clear (from figure 4 of Price) if the support assembly 23 is removable from the base 21, 42, 41 or not, it appears that the support assembly 1 of Haskell is removable from the base 4,5. Note that the provision of a support assembly removable from a base is well-known in the art. Giving the teaching of the second base 21, 41, 42 of Price, an ordinary skill in the art can provide an additional base (as recited: a first base) if desired. Note that giving the teaching of one base, the provision of plurality of bases or of an additional base for a support assembly to be removably insertable into the first base or the second base is obvious to an ordinary skill in the art, and does not provide any unexpected result, and therefore is not patentable over prior art. As for claim 2, note that the base 21, 41, 42 of Price is capable of resting on a flat surface. As for claims 3, 5 note the base 4,5 of Price, and note that the base 4, 5 of Haskell comprises a horizontal frame 5 of a generally planar shape. As for claims 7 - 10, 18, note the means 29 of Price for securing the two support section in a

Art Unit: 3764

telescopic fashion . Note that the recited structure (claims 7-10, 18) of the securing means for securing two tubes members together in a telescopic fashion is well-known in the telescoping tubes art.

Claims 14- 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Price (4,541, 596) in view of Haskell, and further in view of Blatt and Molina. Note the comments above for the teaching of Price and Haskell. Note that the support assembly of Price is capable supporting an arm sling. Blatt teaches an arm sling as recited in claims 14-17. Molina teaches that the hand protrudes from a limb support means. In view of the teaching of Molina, it would have been obvious to an ordinary skill in the art at the time the invention was made to make modify the device of Blatt so that a hand can be protruded from the envelope. In view of the teaching of Blatt, it would have been obvious to an ordinary skill in the art at the time the invention was made to provide the support assembly of Price with the arm sling of Blatt for supporting an injured arm.

Claims 20- 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Price (4,541, 596) in view of Haskell, and further in view of Spencer (6,095,714) and Blatt. Note the comments relative to the claims above for the teaching of Price and Haskell. While Price does not teach the recited grooves and tongue in claim 20, Spencer teaches these grooves and tongue . In view of the teaching of Spencer, it would have been obvious to an ordinary skill in the art at the time the invention was made to provide these recited grooves and tongue

Art Unit: 3764

in order to provide locking means for telescoping tubes. The provision of grooves and tongue in telescoping tubes in order to provide some degree of flexibility of an end structure of the tube is well-known in the art of telescoping tubes, and does not provide any unexpected result, and therefore is not patentable over prior art. Blatt teaches the recited sling assembly. In view of the teaching of Blatt, it would have been obvious to an ordinary skill in the art at the time the invention was made to use the sling of Blatt with the frame 14, 22, 24 of Price for supporting an arm of person.

Claims 12, 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Price in view of Haskell, and further in view of in view of Spencer. Note the comments above for the teachings of Price, Haskell and Spencer.

Claims 1-3, 5, 7-10, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haskell. As for claims 1-3, 5, 19, Haskell shows every claimed feature of claims 1-3, 5, 19 including a first base 4, 5, a support assembly 2, a connector 1, a sling assembly, except for a second base. Note that the base 5 of Haskell is capable of being supported between opposing surfaces. It appears that the support assembly 1 of Haskell is removable from the base 4,5. Note that the provision of a support assembly removable from a base is well-known in the art. Giving the teaching of the first base 4,5 of Haskell, an ordinary skill in the art can provide an additional base (as recited: a second base) if desired. Note that giving the teaching of one base, the provision of plurality of bases or of an additional base for a support assembly to be

Art Unit: 3764

removably insertable into the first base or the second base is obvious to an ordinary skill in the art, and does not provide any unexpected result, and therefore is not patentable over prior art. As for claims 7, 9, 10, 18, note figure 1 and the pin 6 of Haskell. As for claim 8, official notice is taken that the recited securing means is well-known in the telescopic tubes art.

Claims 14- 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haskell in view of Blatt and Molina. Note the comments above for the teaching of Haskell. Note that the support assembly of Haskell is capable supporting an arm sling. Blatt teaches an arm sling as recited in claims 14-17. Molina teaches that the hand protrudes from a limb support means. In view of the teaching of Molina, it would have been obvious to an ordinary skill in the art at the time the invention was made to make modify the device of Blatt so that a hand can be protruded from the envelope. In view of the teaching of Blatt, it would have been obvious to an ordinary skill in the art at the time the invention was made to provide the support assembly of Haskell with the modified arm sling of Blatt for supporting an injured arm.

Claims 20- 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haskell in view of Blatt, and further in view of Spencer (6,095,714) . Note the comments relative to the claims above for the teachings of Haskell and Blatt. While Haskell does not teach the recited grooves and tongue in claim 20, Spencer teaches these grooves and tongue. In view of the teaching of Spencer,

Art Unit: 3764

it would have been obvious to an ordinary skill in the art at the time the invention was made to provide these recited grooves and tongue in order to provide locking means for telescoping tubes. The provision of grooves and tongue in telescoping tubes in order to provide some degree of flexibility of an end structure of the tube is well-known in the art of telescoping tubes, and does not provide any unexpected result, and therefore is not patentable over prior art. Blatt teaches the recited sling assembly. In view of the teaching of Blatt, it would have been obvious to an ordinary skill in the art at the time the invention was made to use the sling of Blatt with the support assembly of Haskell for supporting an arm of person.

Claims 12, 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haskell in view of Spencer (6,095,714). Note the comments above for the teachings of Haskell and Spencer.

Allowable Subject Matter

Claims 13, 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 24 - 31 are allowed.

Applicant's arguments filed on 6/28/2004 have been fully considered but they are not persuasive in view of the new rejections. Note the comments relative

Art Unit: 3764

to the claims above. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, given the teaching of the structure of one well-known removable base for a supporting assembly, it is obvious to an ordinary skill in the art to provide plurality of bases or an additional base if desired for interchanging between the bases. The provision of additional base does not provide an unexpected result, and therefore is not patentable. Applicant argues that "only a single base is described by the Marlow patent". As discussed above, Marlow shows a first base 22, a second base 24 as recited in claims 1, 18.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huong Q. Pham whose telephone number is (703) 305-5129. The examiner can normally be reached on 6:30 AM - 3:00 PM.

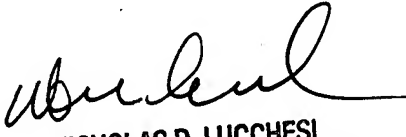
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on (703) 308 - 2698. The fax phone numbers for the organization where this application or proceeding

Art Unit: 3764

is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

August 23, 2004


NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
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